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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,139	12/15/2003	Thomas E. Creamer	BOC9-2003-0085 (456)	3696
40987	7590	02/24/2006	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			BRINEY III, WALTER F	
			ART UNIT	PAPER NUMBER
			2646	
DATE MAILED: 02/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/736,139	Applicant(s) CREAMER ET AL.	
	Examiner Walter F. Briney III	Art Unit 2646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-3, 5-8, 10-13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens et al. (SU Patent Application publication 2003/0053449).**

Claim 1 is limited to “a method of automatically resolving a Digital Subscriber Line failure.” Owens anticipates the method steps of “detecting a failure;” “establishing a call;” “notifying the administrative system” for the same reasons presented in the Non-Final Rejection filed 11 August 2005. The applicant has amended claim 1 to include the steps of “storing in a data store connected to the administrative system” and “sending a message,” both of which will be shown to be either anticipated by or obvious in view of Owens.

It is noted that Owens discloses making a diagnosis of a received problem report and storing the diagnosis in a memory 342 of the remote server 142. See paragraphs 82 and 83. The memory corresponds to a “data store” and—as a reminder—the remote server corresponds to “the administrative system.” The diagnosis that results from the remote server trying to fix the reported DSL problem corresponds to, at least, “information generated by the administrative system relating to a course of action implemented by the administrative system in response to the notifying step” as recited.

In this way, the storing of a diagnosis corresponds to "storing in a data store connected to the administrative system...information generated by the administrative system relating to a course of action implemented by the administrative system in response to the notifying step."

It is further noted that Owens discloses transmitting the aforementioned diagnosis to the client. In general, this corresponds to "sending a message informing a subscriber to the Digital Subscriber Line," but, as noted by the applicant, does not specify that the message inform the subscriber "when resumption of service over the Digital Subscriber Line is expected." However, this undisclosed limitation is directed solely towards non-functional descriptive material. In effect, the step of "sending a message" would be performed the same regardless of the data transmitted, and thus, the non-functional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

It would have been obvious to one of ordinary skill in the art at the time of the invention to transmit any type of message to a subscriber because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Claims 6, 11 and 16 recite essentially the same subject matter as claim 1 and are rejected, in part, for the same reasons presented above and for the same reasons presented in the Non-Final Office Action filed 11 August 2005.

Claims 3, 5, 8, 10, 13 and 15 depend variously on claims 1, 6, 11 and 16, and are rejected, in part, for the same reasons presented above and for the same reasons presented in the Non-Final Office Action filed 11 August 2005.

Claim 2 is limited to "the method of claim 1," as covered by Owens. When the modem of Owens signals 432 to a remote server that there is a problem, the modem is tacitly requesting a repair/"reset", as indicated by the diagnosis step 438. Therefore, Owens makes obvious all limitations of the claim.

Claims 7, 12 and 17 recite essentially the same subject matter as claim 2, and are rejected for the same reasons.

2. **Claims 4, 9 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens in view of Rango (US Patent 6,788,705).

Claim 4 is limited to "the method of claim 1," as covered by Owens. While Owens discloses a method for troubleshooting DSL problems, Owens fails to provide a specific method to repair a central office modem 126. In this way, Owens fails to anticipate "sending a rest message to a modem within a DSL operation center, wherein the modem is associated with the DSL with the failure." However, as shown below, this is overcome by an obvious modification.

In particular, Rango teaches transmitting DSL startup parameters over a voice channel. See Abstract. The method and system of Rango allows the proper handshaking between two DSL modems even if the DSL line is somehow impaired. See column 3, lines 5-8. As explained in column 3, lines 5-32, diagnostic information is gathered in a voice channel and used to reset a modem in the central office. The use of

Rango is inherently motivated by the fact that Owens discloses repairing DSL problems through configuration and diagnoses, but does not disclose any detailed steps.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the system and method as taught by Rango to realize the above stated advantages.

Claims 9 and 14 recite essentially the same subject matter as claim 4, and are rejected for the same reasons.

Response to Arguments

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WFB


SINH TRAN
SUPERVISORY PATENT EXAMINER